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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,099	12/11/2000	Bernd Fischer	D078 1090	2645

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EXAMINER
NGUYEN, KIMBERLY T

ART UNIT	PAPER NUMBER
1774	9

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/700,099	FISCHER ET AL.	
	Examin r	Art Unit	
	Kimberly T. Nguyen	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 April 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) *16-24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

It is acknowledged that Group I, claims 1-15 are provisionally elected.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11, 13, and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "essentially" in claim 14 is a relative term which renders the claim indefinite. The term "essentially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claim 11, it is not clear as to the scope of the claim because Applicants show that "*possibly* one or more co-cross-linking agents" are used with the elastomer. For purposes of examination, the term "possibly" will be interpreted to mean "optionally."

In claim 13, it is not clear as to the scope of the claim because Applicants show that "as well as *possibly* processing aids, etc." are included in the floor covering. For purposes of examination, the term "possibly" will be interpreted to mean "optionally."

In claim 15, it is not clear what is meant by a "homogenous design." Further, the term " homogenous " in claim 15 is a relative term which renders the claim indefinite. The term "homogenous" is not defined by the claim, the specification does not provide a standard for

ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfaendner et al., U.S. Pat. No. 6,362,278 B1 in view of Schwonke et al., U.S. Pat. No. 6,224,804 B1.

Pfaendner shows carpet flooring comprising at least one grafted copolymer (column 20, lines 57-67) and polyolefins comprising ULDPE (VLD PE) (column 25, lines 11-22). Pfaendner shows that the grafted copolymer is a grafted copolymer comprising maleic anhydride grafted to HD polyethylene (column 20, lines 57-67). Pfaendner shows that the grafting degree is from 0.05-15% (column 21, lines 52-53). Pfaendner shows that the novel compatibiliser/stabilizer compounds are added to the polymer to be stabilized in amounts of 0.5-30% (column 24, lines 60-63). Pfaendner shows that the flooring comprises pigments (column 25, lines 36-53).

Pfaendner does not specifically show that the ULDPE has a density of less than 0.910 g/cm^3 as in instant claim 1 or that the density is from 0.85-0.892 g/cm^3 as in instant claim 2. Schwonke shows an elastomer floor covering wherein the density of at least one elastomer based on a polyolefin of PE-VLD (ULDPE) is less than 0.918 g/cm^3 (column 1, lines 55-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the elastomer floor covering of Pfaendner with an ULDPE with the densities as in the instant

invention since it is known that such an elastomer helps to provide a flooring with low-emission, no discoloration, and prevention of unpleasant odors.

Though Pfaendner shows that the flooring comprises copolymers of ethylene and octene (column 23, lines 1-27), Pfaendner does not show the polyolefin mixture of at least two ethylene copolymers with the densities as in instant claim 4. Schwonke shows that the elastomer comprises a copolymer of ethylene wherein the density of the polyolefins is about 0.85 to 0.892 g/cm^3 (claim 12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the elastomer floor covering comprising copolymers of ethylene and octene of Pfaendner with the densities as in the instant invention since it is known that such an elastomer helps to provide a flooring with low-emission, no discoloration, and prevention of unpleasant odors.

Though Pfaendner shows that the flooring comprises crosslinked polyethylene (column 22, lines 49-60), Pfaendner does not show that the elastomer is cross-linked with at least on cross-linking agent based on organic peroxides as in instant claim 11. Schwonke shows that the elastomer is cross-linked with an organic peroxide (column 1, line 66 to column 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the elastomer floor covering comprising elastomers cross-linked with an organic peroxide since it is known that such an elastomer provides a flooring with low-emission, no discoloration, and prevention of unpleasant odors.

Though Pfaendner shows that the flooring comprises crosslinked polyethylene (column 22, lines 49-60), Pfaendner does not show that the elastomer is co-cross-linked with isocyanuric acid derivatives as in instant claim 12. Schwonke shows that the elastomer is cross-linked with

cyanuric acid derivatives (claim 14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the elastomer floor covering comprising elastomers cross-linked with cyanuric acid derivatives since it is known that such an elastomer is a process enhancing additive.

Schwonke does not show the weight ratio of the at least two ethylene copolymers as in instant claim 5. However, such a ratio is a property which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the ratio, absent a showing of unexpected results, it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. ratio) fails to render claims patentable in the absence of unexpected results. All of the aforementioned limitations are optimizable as they control the rheology and elasticity of the flooring. As such, they are optimizable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flooring with the limitation of the weight ratios since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 9 is rejected because the phrase "are used as co-cross-linking agents" in claim 9 introduces process limitations to the product claims. The patentability of a product does not depend on its method of production. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claims are unpatentable even though the prior art was made by a different process. *MPEP 2113.* Further, process limitations are given no patentable weight in product claims.

Claim 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfaendner et al., U.S. Pat. No. 6,362,278 B1 in view of Schwonke et al., U.S. Pat. No. 6,224,804 B1.

Pfaendner is relied upon as above for claims 1 and 13. Pfaendner does not show a mixture of filler comprising mineral intergrowths as in instant claim 14. Pfaendner does not show a variable color pattern and a homogenous design as in instant claim 15.

Schwonke shows an elastomer floor covering comprising pigments, quartz powder, kaoline, and talc (column 2, lines 36-67). Schwonke shows a variable color design and that the flooring is of homogenous construction (claim 7-8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the elastomer floor covering of Pfaendner with pigments in a design and mineral intergrowths of a homogenous constructrion since it is known that such a mixture provides decorative color and an effective filler for the flooring to provide for a consistent composition for the flooring.

Claim 14 is rejected because the phrase "is used as filler" in claim 14 introduce process limitations to the product claims. The patentability of a product does not depend on its method of production. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claims are unpatentable even though the prior art was made by a different process. *MPEP 2113.* Further, process limitations are given no patentable weight in product claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Nguyen whose telephone number is (703) 308-8176. The examiner can normally be reached on Monday to Friday, except on every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly can be reached on (703) 308-0449. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Kimberly T. Nguyen
Examiner
November 4, 2002

CYNTHIA H. KELLY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700